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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 ALTA DEVICES, INC.,

Case No. 18-CV-00404-LHK

13 Plaintiff,

14 v.

15 LG ELECTRONICS, INC.,

**ORDER GRANTING WITH  
PREJUDICE IN PART AND DENYING  
IN PART MOTION TO DISMISS  
CORRECTED AMENDED  
COMPLAINT**

16 Defendant.

Re: Dkt. No. 81

17  
18 Plaintiff Alta Devices, Inc. (“Alta”) filed this suit against LG Electronics, Inc. (“LGE”) that claims that LGE misappropriated its trade secrets. Before the Court is LGE’s motion to dismiss Alta’s corrected amended complaint. Having considered the parties’ briefs, the relevant law, and the record in this case, the Court GRANTS with prejudice in part and DENIES in part LGE’s motion to dismiss the corrected amended complaint.

23 **I. BACKGROUND**

24 **A. Factual Background**

25 Plaintiff Alta is a corporation that was founded in 2008 in Silicon Valley. ECF No. 77 (“CAC”) ¶¶ 1, 8. As of 2011, Alta was the world’s only known manufacturer of thin-film solar

1 technology using Gallium Arsenide (“GaAs”) for widespread commercial use. *Id.* ¶¶ 7–10. Such  
2 technology allows devices coated in the thin GaAs solar film to be “powered by this independent  
3 energy source.” *Id.* ¶ 9.

4 Defendant LGE is a Korean company and one of the world’s largest electronics  
5 manufacturers. *Id.* ¶¶ 2, 38. In 2011, LGE heard about Alta’s thin GaAs solar film technology and  
6 expressed an interest in Alta. *Id.* ¶¶ 38–40. However, Alta alleges that in reality, LGE had, from  
7 the beginning of the parties’ relationship, an intention to evaluate Alta’s technology for possible  
8 misappropriation, which LGE concealed from Alta. *Id.* ¶¶ 14, 19, 41, 51. In early June of 2011,  
9 Alta and LGE entered into discussions regarding possible investment or other business  
10 opportunities related to Alta’s technology. *Id.* ¶ 40.

11 On June 13, 2011, Alta and LGE entered into a mutual non-disclosure agreement (“2011  
12 NDA,” or “Agreement”) that prohibited both parties from disclosing or using “Confidential  
13 Information” disclosed by the other party in connection with discussions regarding the potential  
14 business opportunities. *Id.* ¶ 41. The 2011 NDA defined Alta’s confidential information and stated  
15 that “the Confidential Information is proprietary to the disclosing party [(Alta)], has been  
16 developed and obtained through great efforts and expense by the disclosing party, and that  
17 disclosing party regards all of its Confidential Information as trade secrets.” *Id.* ¶¶ 42–43 (quoting  
18 CAC, Ex. A (“2011 NDA”) ¶ 1(i)). Relevant for purposes of the instant motion, the 2011 NDA  
19 provides that two terms are covered under Section 5 of the 2011 NDA: (1) “the time for the  
20 parties’ disclosure of Confidential Information,” and (2) “the duration of the duty to hold in  
21 confidence the Confidential Information disclosed.” *Id.* ¶ 45 (citing 2011 NDA ¶ 5). The text of  
22 Section 5 of the 2011 NDA specifically provides:

23 **Term.** The term for the parties’ disclosure of Confidential Information under this  
24 Agreement (“Disclosure Period”) shall be one (1) year (extendable by addendum)  
25 from the Effective Date. The parties’ duty to hold in confidence Confidential  
26 Information that was disclosed during the Term shall survive for an additional three  
27 (3) years after the expiration of this Agreement.

28 2011 NDA ¶ 5. The 2011 NDA further provides in Section 6 that upon the request of the

1 disclosing party, the

2 [r]eceiving party shall immediately return and redeliver to the disclosing party, all  
3 tangible material embodying the Confidential Information provided hereunder, and  
4 all notes, summaries, memoranda, drawings, manuals, records, excepts [sic], or  
5 derivative information derived therefrom, and all other documents or materials  
6 (“Notes”) (and all copies of any of the foregoing, including but not limited to  
7 “copies” that have been converted to computerized media in the form of image, data,  
8 or word processing files either manually or by image capture) based on or including  
9 any Confidential Information, in whatever form of storage or retrieval, upon the  
10 earlier of (i) the completion or termination of the dealings between the parties  
11 contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time  
12 as the disclosing party may so request. . . .

13 CAC ¶ 46 (quoting 2011 NDA ¶ 6).

14 The corrected amended complaint alleges that as a result of the 2011 NDA, LGE gained  
15 information “showing the financial and technical feasibility of the mass-production of Alta  
16 Devices’ solar film technology, testing information, and plans for improvement, as well as other  
17 Confidential Information.” *Id.* ¶ 50.

18 On October 31, 2011, LGE visited Alta to learn more about Alta’s technology, through  
19 which LGE gained additional confidential information. *Id.* The corrected amended complaint  
20 alleges that “[b]y November 7, 2011, [LGE] intentionally began to plan how to develop in-house  
21 Alta’s technology, by using trade secrets fraudulently acquired from Alta through its  
22 misappropriation.” *Id.* Further, the corrected amended complaint alleges that LGE represented an  
23 intention to invest in Alta in order to obtain more trade secret confidential information. *Id.* ¶ 51.  
24 Alta maintains that this representation led to LGE seeking and receiving further detailed  
25 information about the techniques and processes involved in the actual manufacturing of the solar  
26 film developed by Alta. *Id.* ¶¶ 51–55. However, after receiving this confidential information from  
27 Alta, LGE declined to make binding its previous tentative investment offer. *Id.* ¶ 56.

28 In late 2013 and early 2014, LGE posed as a potential costumer interested in purchasing  
thin GaAs solar film for incorporation onto its manufactured mobile devices and sought and  
received a sample of Alta’s thin GaAs solar film for testing its “charging efficiency.” *Id.* ¶ 64.

1 LGE then used this material for technical analysis and reverse engineering to assist LGE in  
2 developing its own manufacturing process. *Id.* LGE then developed its manufacturing capabilities  
3 using Alta's confidential information and is now producing very similar thin GaAs solar film  
4 while moving toward full-scale, mass-commercialized economical production. *Id.* ¶ 17. LGE is  
5 currently marketing its thin GaAs solar film that Alta alleges is manufactured using Alta's  
6 confidential information. *Id.* ¶ 18.

7 On September 3, 2014, LGE and Alta entered into a second, separate non-disclosure  
8 agreement (the "2014 NDA") regarding disclosure of technology and materials for mobile devices.  
9 *Id.* ¶ 48 n.1; *see also* ECF No. 82-2, Ex. B ("2014 NDA").<sup>1</sup> Alta explains that the confidential  
10 information disclosed pursuant to the 2014 NDA is not the subject of the claims in the instant  
11 action. *Id.*

12 The corrected amended complaint alleges that Alta only learned of LGE's  
13 misappropriation of Alta's trade secrets in mid-2016. *Id.* ¶ 65. Publications produced by LGE  
14 described solar cell structures manufactured using similar manufacturing techniques as Alta's, and  
15 an LGE patent application appears to incorporate similar aspects of Alta's production process and  
16 tooling. *Id.* ¶¶ 66–72.

17 As a result, in August 2016, Alta sought reassurances from LGE and requested that LGE  
18 return Alta's confidential information pursuant to the 2011 NDA. *Id.* ¶¶ 74–83. LGE refused to  
19 return all of Alta's confidential information. *Id.* ¶¶ 77, 86. LGE also "unintentionally discarded"  
20 two of the five solar cell samples it had received from Alta. *Id.* ¶ 87. Moreover, the materials LGE  
21 did return had redacted summaries and analysis of Alta's confidential information, and that much  
22 of the production "consisted of many LG[E]-branded documents that appeared to be presentations  
23 summarizing the results of LG[E]'s testing, analysis, use and study of Alta's Confidential

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<sup>1</sup> A court may consider documents that were referenced but not attached to the complaint for  
26 purposes of deciding a Rule 12(b)(6) motion. *Davis v. HSBC Bank Nev., NS.*, 691 F.3d 1152,  
1159–60 (9th Cir. 2012); *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).

1 Information.” *Id.* ¶¶ 59–63, 77.

2 LGE is now marketing a very similar thin GaAs solar film technology in competition with  
3 Alta. *Id.* ¶ 18. LGE claims that it is offering the same technology at lower prices, thereby “passing  
4 off” Alta’s technology as its own. *Id.* ¶¶ 18–19, 120, 123–24. The corrected amended complaint  
5 alleges that LGE’s use of Alta’s trade secrets has diminished and may destroy the market for  
6 Alta’s proprietary product and that Alta’s very existence is threatened by LGE’s use of Alta’s  
7 confidential information obtained under the 2011 NDA. *Id.* ¶¶ 20–21; 90–92.

8 **B. Procedural History**

9 Alta filed its original complaint on January 18, 2018. *See* ECF No. 1 (“Compl.”). Alta’s  
10 complaint asserted five claims for relief. First, Alta claimed that LGE misappropriated Alta’s trade  
11 secrets in violation of 18 U.S.C. § 1836, *et seq*, the Defend Trade Secrets Act (“DTSA”). *Id.* ¶¶  
12 92–102. Second, Alta claimed that LGE misappropriated Alta’s trade secrets in violation of  
13 California Civil Code § 3426, *et seq*, the California Uniform Trade Secrets Act (“CUTSA”). *Id.* ¶¶  
14 103–11. Third, Alta brought a breach of contract claim, arguing that LGE breached the 2011  
15 NDA. *Id.* ¶¶ 112–18. Fourth, Alta alleged violations of California Bus. & Prof. Code. § 17200, *et*  
16 *seq*, California’s Unfair Competition Law (“UCL”), under the unlawful, unfair and fraudulent  
17 prongs. *Id.* ¶¶ 119–24. Finally, Alta sought a declaratory judgment affirming that LGE breached  
18 its duties under the 2011 NDA and used Alta’s confidential information in such breach. *Id.* ¶¶  
19 125–30.

20 On June 18, 2018, LGE filed its motion to dismiss Alta’s original complaint. ECF No. 26.  
21 Alta opposed on July 16, 2018. ECF No. 33. LGE replied on August 6, 2018. ECF No. 42.

22 On October 17, 2018, the Court granted in part and denied in part LGE’s motion to dismiss  
23 Alta’s original complaint. ECF No. 55 (“October 17, 2018 Order”). In particular, the Court denied  
24 LGE’s motion to dismiss Alta’s DTSA and CUTSA claims. *Id.* at 7–18. Next, the Court granted  
25 with prejudice LGE’s motion to dismiss Alta’s claim for breach of contract based on LGE’s  
26 failure to return information disclosed under the 2011 NDA for being barred by the statute of  
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1 limitations. *Id.* at 18–22. However, the Court denied LGE’s motion to dismiss Alta’s claim for  
2 breach of contract based on LGE’s misuse of confidential information. *Id.* at 22. The Court next  
3 granted LGE’s motion to dismiss Alta’s UCL claim for being superseded by Alta’s CUTSA trade  
4 secret misappropriation claim. *Id.* at 24–25. The Court granted Alta leave to eliminate the trade  
5 secret misappropriation allegations and to set forth more clearly a basis for the UCL claim that is  
6 not superseded by the CUTSA. *Id.* Finally, as to Alta’s declaratory judgment claim, the Court  
7 denied LGE’s motion to dismiss the entirety of the declaratory judgment claim. *Id.* at 25–27.  
8 Instead, the Court granted LGE’s motion to dismiss with prejudice to the extent the declaratory  
9 judgment claim relied on Alta’s breach of contract claim based on failure to return confidential  
10 information. *Id.* The Court granted without prejudice LGE’s motion to dismiss the declaratory  
11 judgment claim in so far as it relies on Alta’s UCL claim. *Id.* at 26–27. Specifically, the Court  
12 granted “leave to amend to eliminate trade secret misappropriation allegations and to set forth  
13 more clearly a basis for a declaration as to LGE’s unfair, unlawful, or fraudulent business acts and  
14 practices.” *Id.*

15 On November 16, 2018, Alta filed its amended complaint. ECF No. 72. On November 26,  
16 2018, the parties filed a stipulated request for an order permitting Alta to file a corrected first  
17 amended complaint. ECF No. 75. Specifically, Alta presented that “upon further review following  
18 its November 16, 2018 filing, Alta would like to file a Corrected First Amended Complaint in  
19 further response to the Court’s [October 17, 2018] Order.” *Id.* The Court granted the parties’  
20 stipulation on November 27, 2018. ECF No. 76. On November 27, 2018, Alta filed its corrected  
21 amended complaint, which is the current operative complaint. *See CAC.*

22 Alta’s corrected amended complaint reasserts Alta’s five claims: (1) trade secret  
23 misappropriation in violation of the DTSA; (2) trade secret misappropriation in violation of the  
24 CUTSA; (3) breach of contract; (4) violations of the UCL; and (5) declaratory judgment. *See id.*

25 On December 14, 2018, LGE filed the instant motion to dismiss the corrected amended  
26 complaint. ECF No. 81 (“Mot.”). On January 4, 2019, Alta filed its opposition. ECF No. 85

1 (“Opp’n”). On January 16, 2019, LGE filed its reply. ECF No. 88 (“Reply”).

2 **II. LEGAL STANDARD**

3 **A. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)**

4 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include “a  
5 short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint  
6 that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure  
7 12(b)(6). The United States Supreme Court has held that Rule 8(a) requires a plaintiff to plead  
8 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v.*  
9 *Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads  
10 factual content that allows the court to draw the reasonable inference that the defendant is liable  
11 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility  
12 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a  
13 defendant has acted unlawfully.” *Id.* (internal quotation marks omitted). For purposes of ruling on  
14 a Rule 12(b)(6) motion, the Court “accept[s] factual allegations in the complaint as true and  
15 construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St.*  
16 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

17 The Court, however, need not accept as true allegations contradicted by judicially  
18 noticeable facts, *see Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it “may look  
19 beyond the plaintiff’s complaint to matters of public record” without converting the Rule 12(b)(6)  
20 motion into a motion for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir.  
21 1995). Nor must the Court “assume the truth of legal conclusions merely because they are cast in  
22 the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per  
23 curiam) (internal quotation marks omitted). Mere “conclusory allegations of law and unwarranted  
24 inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183  
25 (9th Cir. 2004).

26 **B. Motion to Dismiss Under Federal Rule of Civil Procedure 9(b)**

1           Federal Rule of Civil Procedure 9(b) requires that allegations of fraud be stated with  
2 particularity. Specifically, the Ninth Circuit has held that averments of fraud “be accompanied by  
3 ‘the who, what, when, where, and how’ of the misconduct charged.” *Vess v. Ciba-Geigy Corp.*  
4 *USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir.  
5 1997)). When an “entire claim within a complaint[] is grounded in fraud and its allegations fail to  
6 satisfy the heightened pleading requirements of Rule 9(b), a district court may dismiss the . . .  
7 claim.” *Id.* at 1107. The Ninth Circuit has recognized that “it is established law in this and other  
8 circuits that such dismissals are appropriate,” even though “there is no explicit basis in the text of  
9 the federal rules for the dismissal of a complaint for failure to satisfy 9(b).” *Id.* A motion to  
10 dismiss a complaint “under Rule 9(b) for failure to plead with particularity is the functional  
11 equivalent of a motion to dismiss under Rule 12(b)(6) for failure to state a claim.” *Id.*

12           **C. Leave to Amend**

13           If the Court determines that a complaint should be dismissed, it must then decide whether  
14 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend  
15 “shall be freely given when justice so requires,” bearing in mind “the underlying purpose of Rule  
16 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v.*  
17 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks  
18 omitted). When dismissing a complaint for failure to state a claim, “a district court should grant  
19 leave to amend even if no request to amend the pleading was made, unless it determines that the  
20 pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (internal  
21 quotation marks omitted). Accordingly, leave to amend generally shall be denied only if allowing  
22 amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the  
23 moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532  
24 (9th Cir. 2008).

25           **III. DISCUSSION**

26           Alta’s corrected amended complaint asserts five causes of action: (1) trade secret

1 misappropriation in violation of the DTSA; (2) trade secret misappropriation in violation of the  
2 CUTSA; (3) breach of contract; (4) violations of the UCL; and (5) declaratory judgment. *See*  
3 CAC.

4 LGE argues that several of Alta's amendments in its corrected amended complaint were  
5 unauthorized by the Court. Mot. at 18–19. LGE additionally argues that Alta's UCL claim should  
6 be dismissed either for CUTSA supersession or because the UCL fraud allegations fail to meet the  
7 heightened pleading standard required by Federal Rule of Civil Procedure 9(b). Mot. at 4–11. LGE  
8 argues next that Alta has failed to amend its declaratory judgment claim to demonstrate that the  
9 claim, to the extent it is based on the UCL, is not superseded by the CUTSA. Mot. at 11. LGE also  
10 argues that Alta's CUTSA and DTSA claims fail as the allegations in the corrected amended  
11 complaint make clear that both claims are time barred. Mot. at 12–18. Finally, LGE argues in a  
12 footnote that Alta's remaining allegations of fraud in the corrected amended complaint, paragraphs  
13 12, 14, 15, 16, 19, 41, 50, 51, 52, 56, 64, 97, 98, 104, and 107, should be dismissed for failure to  
14 satisfy the pleading requirements in Rule 9(b). Mot. at n.5. The Court discusses these arguments in  
15 turn.

16 **A. Alta's Amendments in its Corrected Amended Complaint Were Proper**

17 As an initial matter, LGE argues that Alta's corrected amended complaint includes  
18 amendments that were not authorized by the Court. Mot. at 18–19; Reply at 13–15. Specifically,  
19 LGE objects to Alta's addition of several new allegations and theories in support of Alta's claims.  
20 Mot. at 18–19. The Court disagrees. The Court's October 17, 2018 Order instructed that "Alta  
21 may not add new causes of action or new parties without stipulation or leave of the Court."  
22 October 17, 2018 Order at 28. Alta amended its complaint and added no new causes of actions or  
23 new parties. Therefore, Alta's amendments were not in violation of the Court's October 17, 2018  
24 Order. The Court thus DENIES LGE's motion to dismiss on this ground.

25 **B. UCL, Cal. Bus. & Prof. Code § 17200 Claim**

26 Alta's fourth claim is brought under the UCL. CAC ¶¶ 119–24. The UCL creates a cause  
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1 of action for business practices that are (1) unlawful, (2) unfair, or (3) fraudulent. Bus. & Prof.  
2 Code. § 17200. Each “prong of the UCL [provides] a separate and distinct theory of liability.”  
3 *Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718, 731 (9th Cir. 2007). LGE argues that Alta’s  
4 UCL claim fails because it is superseded by the CUTSA. Mot. at 4–8. In addition, LGE argues that  
5 Alta’s UCL claim fraud prong allegations fail to meet the heightened pleading standard required  
6 by Rule 9(b). Mot. at 8–11. For the reasons given below, the Court agrees that Alta’s UCL claim  
7 is superseded by the CUTSA, and therefore the Court need not discuss LGE’s argument regarding  
8 Alta’s UCL claim fraud prong allegations.<sup>2</sup> Below, the Court first discusses the Court’s October  
9 17, 2018 Order on the motion to dismiss the original complaint before turning to the UCL claim in  
10 the corrected amended complaint.

11 **1. The October 17, 2018 Dismissed Alta’s UCL Claim with Leave to Amend**

12 In the October 17, 2018 Order, the Court first reviewed the law on CUTSA supersession.  
13 See October 17, 2018 Order at 24. Specifically, “[u]nder California law, CUTSA provides the  
14 exclusive civil remedy for conduct falling within its terms and supersedes other civil remedies  
15 based upon misappropriation of a trade secret. It therefore supersedes claims—including Section  
16 17200 claims—based on the same nucleus of facts as trade secret misappropriation.” *Waymo LLC*  
17 v. *Uber Tech., Inc.*, 256 F. Supp. 3d 1059, 1062 (N.D. Cal. 2017) (citations omitted) (emphasis  
18 added); Cal. Civ. Code. § 3426.7; *see also SunPower Corp. v. SolarCity Corp.*, No. 12-CV-00694-  
19 LHK, 2013 WL 6160472, at \*3 (N.D. Cal. Dec. 11, 2012) (“If there is no material distinction  
20 between the wrongdoing alleged in a [C]UTSA claim and that alleged in a different claim, the  
21 [C]UTSA claim preempts the other claim.”) (citations omitted). The savings clause does not affect  
22 “contractual remedies” and “civil remedies” “that are not based upon misappropriation of a trade  
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<sup>2</sup> Nonetheless, LGE argues that “[e]ven if the [UCL] claim is dismissed based on CUTSA  
25 supersession, all remaining allegations of fraud in the [corrected amended complaint] (¶¶ 12, 14,  
26 15, 16, 19, 41, 50, 51, 52, 56, 64, 97, 98, 104, 107), no matter what section of the [corrected  
27 amended complaint] they appear in, should likewise be dismissed for failure to satisfy Fed. R. Civ.  
P. 9(b). *see Opp’n at 11 n.5.* The Court addresses this argument in Section III.E. of the instant  
Order.

1 secret.” *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 233 (2010), *disapproved on other*  
2 *grounds by Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011). “At the pleadings stage, the  
3 supersession analysis asks whether, stripped of facts supporting trade secret misappropriation, the  
4 remaining factual allegations can be reassembled to independently support other causes of action.”  
5 *Waymo LLC*, 256 F. Supp. 3d at 1062 (citation omitted).

6 In the October 17, 2018 Order, the Court found that Alta’s UCL claim was superseded  
7 because it was directly dependent on trade secret misappropriation allegations. October 17, 2018  
8 Order at 24. For instance, Alta had alleged that LGE “engaged in unlawful, unfair, and/or  
9 fraudulent business acts and practices. Such acts and practices include, but are not limited to,  
10 misappropriating [Alta’s] proprietary, trade secret and Confidential Information.” *See id.* at 24  
11 (citing Compl. ¶ 120). The Court therefore granted LGE’s motion to dismiss Alta’s UCL claim. *Id.* at  
12 25. The Court granted leave to eliminate the trade secret misappropriation allegations and to set  
13 forth a basis for the UCL claim that is not superseded by CUTSA. *Id.* The Court warned that if  
14 Alta failed to cure the deficiencies identified in the October 17, 2018 Order, any deficient claims  
15 would be dismissed with prejudice. *Id.* at 28.

16 **2. Alta’s UCL Claim in the Corrected Amended Complaint**

17 In its corrected amended complaint, Alta alleges that LGE’s unlawful, unfair, and  
18 fraudulent acts and practices include, but are not limited to “acquir[ing] and us[ing]” as well as  
19 “obtaining [Alta’s] proprietary and Confidential Information *other than Alta’s trade secrets from*  
20 *Alta*, obtaining samples of Alta’s materials not publicly available for purposes of reverse  
21 engineering by LG[E][,] and LG[E] passing off to the market as its own technology that which is  
22 truly owned by Alta.” CAC ¶¶ 120, 123 (emphasis added). Alta also alleges that “[t]o the extent  
23 that LG[E]’s reverse engineering is not deemed misappropriation of Alta’s trade secrets, such  
24 reverse engineering, as well as LG[E]’s passing off of Alta’s technology as its own, constitutes  
25 unfair competition.” *Id.* ¶ 123. After Alta amended its UCL claim in the corrected amended  
26 complaint, the parties continue to dispute whether Alta’s amended allegations set forth a basis for  
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1 the UCL claim that is not superseded by the CUTSA.

2 As an initial matter, both parties agree that even claims based on non-trade secret  
3 confidential information are generally superseded by the CUTSA. Mot. at 4–6; Opp’n at 6; *Silvaco*  
4 *Data Sys. v. Intel Corp.*, 184 Cal. App. 4th at 239 (“If the plaintiff identifies no property right  
5 outside of trade secrets law, then he has no remedy outside that law, and there is nothing unsound  
6 or unjust about holding other theories superseded.”); *SunPower Corp.*, 2013 WL 6160472, at \*5  
7 (“CUTSA supersedes claims based on the misappropriation of information, regardless of whether  
8 such information ultimately satisfies the definition of trade secret.”); *Waymo LLC*, 256 F. Supp. 3d  
9 at 1063 (“Under *Silvaco*, however, CUTSA also supersedes claims based on alleged  
10 misappropriation of non-trade secret information unless some other provision of positive law  
11 grants a property right in that information.”). Both parties also recognize that there are two  
12 exceptions to CUTSA supersession based on the misappropriation of non-trade secret confidential  
13 information: (1) where the claims “allege facts showing that the plaintiff’s property right in the  
14 information at issue stems from some provision of positive law on grounds qualitatively different  
15 from grounds upon which trade secrets are considered property”; and (2) where the claims “allege  
16 wrongdoing materially distinct from the wrongdoing alleged in a CUTSA claim.” *See Waymo*  
17 *LLC*, 256 F. Supp. 3d at 1063 (citations omitted); *see also SunPower Corp.*, 2013 WL 6160472, at  
18 \*9; Mot. at 7; Opp’n at 6.

19 Alta concedes that the first exception does not save its claim and instead argues that its  
20 UCL claim falls under the second “distinct wrongdoing” exception. Opp’n at 6. Even if Alta had  
21 not conceded the first exception, the Court would have found that the property right exception  
22 does not apply. For instance, nowhere in Alta’s amended complaint or in the opposition does Alta  
23 define its “proprietary and Confidential Information other than Alta’s trade secrets.” *See CAC ¶¶*  
24 120 123, 126, 128. Indeed, the phrase “proprietary and Confidential Information other than Alta’s  
25 trade secrets” does not make its first appearance until the portions of Alta’s corrected amended  
26 complaint that set forth its specific UCL claim. *See id.* Therefore, not knowing what this  
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1 information is, the Court cannot conclude that this information is deemed property by some law  
2 other than CUTSA. *See SunPower Corp.*, 2012 WL 6160472, at \*9 (finding that the plaintiff never  
3 defined the term “non-trade secret proprietary information” in its complaint and that, “[g]iven the  
4 dearth of information concerning the nature of [plaintiff’s] non-trade secret proprietary  
5 information, the Court cannot conclude that this information is made property by virtue of some  
6 law other than CUTSA.”).

7 As to the second “distinct wrongdoing” exception, Alta argues that its UCL claim as  
8 amended is not superseded by the CUTSA because it is based on materially distinct wrongdoing,  
9 including (1) LGE obtaining samples from Alta for “reverse engineering” by falsely posing as an  
10 interested costumer in 2013–2014; and (2) LGE’s publicly “passing off” Alta’s technology as  
11 LGE’s own. Opp’n at 7 (citing CAC ¶¶ 120, 123). LGE replies first, that “reverse engineering”  
12 and “passing off” are not the only wrongdoing used to support Alta’s UCL claim and that the  
13 wrongdoing alleged in the UCL claim as a whole is not materially distinct from Alta’s CUTSA  
14 claim. Reply at 2. Second, LGE argues that the reverse engineering and passing off allegations do  
15 not demonstrate that Alta’s UCL claim is materially distinct from the CUTSA claim. *Id.* at 3–5.  
16 The Court agrees with LGE and discusses LGE’s arguments in turn.

17 **a. Alta’s UCL Claim as a Whole is Not Materially Distinct from the CUTSA  
18 Claim**

19 First, the Court agrees with LGE that Alta has misrepresented its own pleading because the  
20 UCL claim is not limited to “reverse engineering” and “passing off.” *See* Mot. at 2; *see also* CAC  
21 ¶ 120. Indeed, Alta alleges that the unlawful, unfair, and fraudulent acts and practices also include,  
22 but are not limited to “*acquir[ing] and us[ing]*” as well as “*obtaining* [Alta’s] proprietary and  
23 Confidential Information other than Alta’s trade secrets from Alta . . . .” CAC ¶¶ 120, 123  
24 (emphasis added). Therefore, the course of conduct that Alta alleges in support of its UCL claim is  
25 broader than Alta’s opposition acknowledges. Additionally, the relevant inquiry is not, as Alta  
26 asserts, whether the non-CUTSA claim requires the pleading of different facts *in addition* to the  
27 facts that support the CUTSA claim. *Compare SunPower Corp.*, 2012 WL 6160472, at \*12, with  
28

1 Opp'n at 6. Rather, the relevant inquiry is whether "there is a material distinction between the  
2 wrongdoing alleged in a CUTSA claim and that alleged in the non-CUTSA claim." *See SunPower*  
3 *Corp.*, 2012 WL 6160472, at \*12 (citations and brackets omitted).

4 Reviewing Alta's UCL claim as a whole, the Court finds that Alta's UCL claim alleges  
5 substantially the same wrongdoing as alleged in Alta's CUTSA claim. Importantly, Alta's UCL  
6 claim alleges that LGE violated Alta's rights by acquiring through improper means or using  
7 without consent (*i.e.*, misappropriating)<sup>3</sup> Alta's proprietary information. A comparison of Alta's  
8 CUTSA claim and UCL claim underscores the similarities between the wrongdoing alleged for  
9 both claims. For instance, to support its trade secret misappropriation claim under the CUTSA,  
10 Alta alleges that it "owned and possessed certain proprietary, trade secret, and Confidential  
11 Information," and that LGE "misappropriated" Alta's "trade secrets through continuous fraudulent  
12 acquisition and continuous wrongful and fraudulent use and disclosures, and threatens to further  
13 misappropriate Alta Devices' trade secrets by both selling devices manufactured using Alta's  
14 proprietary, trade secret and confidential information, and by claiming as its own intellectual  
15 property devices and processes developed using such information." CAC ¶¶ 106, 107. Similarly,  
16 to support its UCL claim, Alta alleges that LGE, through fraud, "acquired and used Alta Device's  
17 proprietary and Confidential Information other than Alta's trade secrets, as well as samples of  
18 Alta's materials not publicly available" and that LGE is "passing off to the market as its own  
19 technology that which is truly owned by Alta." *Id.* ¶ 123. The conduct in both claims is, in  
20 essence, the same wrongdoing. *See, e.g.*, *See SunPower Corp.*, 2012 WL 6160472, at \*13 (finding  
21 that the wrongdoing as was alleged in connection with the trade secret misappropriation claim was  
22 effectively the same wrongdoing as was alleged in connection with the non-trade secret claim, and  
23 therefore the non-trade secret claim was superseded). Moreover, it is telling that neither Alta's  
24

25 \_\_\_\_\_  
26 <sup>3</sup> *See* Cal. Civ. Code § 3426.1 ("Misappropriation" means: (1) "Acquisition of a trade secret of  
27 another by a person who knows or has reason to know that the trade secret was acquired by  
improper means;" or (2) "Disclosure or use of a trade secret of another without express or implied  
consent").

1 corrected amended complaint nor Alta’s opposition brief attempts to distinguish its “proprietary  
2 and Confidential [(non-trade secret)] Information” from its “proprietary, trade secret and  
3 Confidential Information.” *See, e.g., Waymo LLC*, 256 F. Supp. 3d at 1064 (“Tellingly, neither the  
4 amended complaint nor Waymo’s opposition brief attempts to distinguish its trade secrets from  
5 non-trade secret “confidential information.”). Indeed, Alta concedes this to some extent when Alta  
6 states (incorrectly) in its opposition that “Alta is not required to allege facts distinguishing its non-  
7 trade secrets information from its trade secrets.” Opp’n at 9.

8 Further, Alta’s UCL claim as a whole incorporated the same factual allegations regarding  
9 LGE’s unauthorized acquisition and use of Alta’s information as Alta’s CUTSA claim. *See, e.g.,*  
10 CAC ¶¶ 19, 41, 64 (alleging facts regarding LGE’s acquisition and use of Alta’s information); *id.*  
11 ¶ 103 (incorporating “all preceding and foregoing allegations” of the complaint into Alta’s  
12 CUTSA claim); *id.* ¶ 119 (incorporating the “preceding and foregoing allegations in paragraphs 1  
13 through 92” into Alta’s UCL claim); *See SunPower Corp.*, 2012 WL 6160472, at \*13 (finding no  
14 material difference between the wrongdoing alleged in support of the plaintiff’s trade secret claim  
15 and the wrongdoing alleged in support of plaintiff’s non-trade secret claims when, among other  
16 reasons, the non-trade secret claims incorporated the same factual allegations regarding  
17 defendants’ unauthorized access and use of plaintiff’s information as plaintiff’s trade secret  
18 claim).

19 In sum, the Court finds that Alta’s UCL claim as a whole is not materially distinct from  
20 Alta’s CUTSA claim.

21 **b. Alta’s Arguments Regarding “Reverse Engineering” and “Passing off” are  
22 Unpersuasive**

23 The Court is also unpersuaded by Alta’s attempts to state that its allegations regarding  
24 “reverse engineering” and “passing off” demonstrate that Alta’s UCL claim qualifies for the  
25 distinct wrongdoing exception to supersession. First, as to reverse engineering, Alta effectively  
26 alleges that LGE engaged in reverse engineering *to further* its trade secret misappropriation. *See,*  
27 *e.g.,* CAC ¶ 64 (“LG[E] fraudulently concealing its true intent, sought this material for technical

1 analysis and/or reverse engineering to assist LG[E] in further development of its manufacturing  
2 process using previously obtained Alta Confidential Information in competition with Alta”;  
3 “LG[E] used these samples for reverse engineering and technical analysis to aid its manufacturing  
4 development, building upon, using and incorporating Confidential Information already gained  
5 from Alta under the NDA.”). In addition, Alta explicitly phrases its reverse engineering allegations  
6 as a fallback for its trade secret misappropriation claims further demonstrating that the reverse  
7 engineering claim is not distinguishable from the CUTSA claim. *See*, CAC ¶ 123 (“To the extent  
8 that LG[E]’s reverse engineering is not deemed misappropriation of Alta’s trade secrets, such  
9 reverse engineering, as well as LG[E]’s passing off of Alta’s technology as its own, constitutes  
10 unfair competition.”); *see also*, e.g., *Waymo LLC*, 256 F. Supp. 3d at 1064 (finding no  
11 supersession exception where plaintiff “apparently intend[ed] to use its Section 17200 claim as a  
12 fallback for any information that ultimately fails to qualify for trade secret protection as [the]  
13 litigation progresse[d].”).

14 Second, as to “passing off,” this type of wrongdoing appears in both Alta’s CUTSA claim  
15 and Alta’s UCL claim. For instance, to support its trade secrets misappropriation claim under the  
16 CUTSA, Alta alleges that LGE misappropriated Alta’s trade secrets by “both selling devices  
17 manufactured using Alta’s proprietary, trade secret and Confidential Information, and *by claiming*  
18 *as its own* intellectual property devices and processes developed using such information.” CAC ¶  
19 107 (emphasis added); *see also id.* ¶ 98 (describing the same conduct as to Alta’s DTSA claim).  
20 Similarly, to support its UCL claim, Alta alleges that LGE violates the UCL by “passing off to the  
21 market as its own technology that which is truly owned by Alta.” CAC ¶ 123. These allegations  
22 are effectively the same.

23 Further, Alta concedes in its opposition that Alta’s “passing off” claim is related to the  
24 allegation appearing in paragraph 98 of both Alta’s original complaint and its corrected amended  
25 complaint. Opp’n at 11 n.9 (discussing CAC ¶ 98). Paragraph 98 of the corrected amended  
26 complaint forms part of the factual allegations for Alta’s DTSA claim and contains language

1 identical to paragraph 107 of Alta’s CUTSA claim. *Compare CAC ¶ 98, with id. ¶ 107.* Thus, Alta  
2 acknowledges that its “passing off” claim is not materially distinct from its federal and state trade  
3 secret misappropriation claims.

4 Finally, Alta’s citation to *Codexis, Inc. v. Enzymeworks, Inc.*, does not save its UCL claim  
5 from supersession. Opp’n at 7–8 (citing *Codexis, Inc.*, No. 16-CV-00826-WHO, 2016 WL  
6 4241909 (N.D. Cal. Aug. 11, 2016)). In *Codexis*, the court found that the plaintiff had pled  
7 elements that differentiated plaintiff’s UCL claim from its trade secret misappropriation claim.  
8 2016 WL 4241909, at \*8. However, the conduct alleged in *Codexis* differed from the conduct  
9 alleged in the instant case. For instance, to the extent the *Codexis* court recognized that the  
10 conduct included “improper, dishonest, and unfair extracting of information, reverse engineering,  
11 deconstructing, disassembling, sequencing, copying, altering, modifying, and/or creating a variant  
12 or derivative of” *Codexis*’s products, which “enabled the defendants to ‘deceive and confuse the  
13 consuming public by holding out their copied or improperly derived products,’” that conduct was  
14 alleged to be in violation of “*the terms and conditions* of *Codexis*’s products.” *Id.* at \*8. Put  
15 differently, that conduct was based on breach of contract, which is a ground expressly exempted  
16 from CUTSA supersession. *See SunPower Corp.*, 2012 WL 6160472, at \*3 (explaining that  
17 CUTSA does not supersede contractual remedies).

18 By contrast here, the reverse engineering and “passing off” claims are not based on a  
19 contractual breach. *See CAC ¶¶ 119–24.* Moreover, the conduct in *Codexis* included a wide range  
20 of conduct that the court found differentiated the UCL claim from the trade secret  
21 misappropriation claim, including “photographing a *Codexis* presentation during a conference in  
22 violation of the conference’s rules.” 2016 WL 4241909 at \*8. The *Codexis* court explained that  
23 “[c]onsidering the range of conduct pleaded,” the UCL claim was not superseded. By contrast  
24 here, Alta’s UCL claim lacks a range of conduct that is materially distinct from its trade secret  
25 misappropriation claim. Thus, *Codexis* is inapposite.

26 In sum, the Court finds that Alta’s reverse engineering and passing off allegations fail to  
27

1 demonstrate that Alta’s UCL claim is materially distinct from the CUTSA claim.

2 **c. Alta’s UCL Claim is Dismissed with Prejudice**

3 In sum, the Court finds that Alta’s UCL claim fails to allege wrongdoing materially  
4 distinct from the wrongdoing alleged in Alta’s CUTSA claim. Therefore, because neither of the  
5 two exceptions to supersession applies, Alta’s UCL claim is superseded by the CUTSA. Thus, the  
6 Court GRANTS LGE’s motion to dismiss Alta’s UCL claim.

7 The October 17, 2018 Order specifically identified that Alta’s UCL claim was superseded  
8 by the CUTSA. *See* October 17, 2018 Order at 25. The Court therefore gave Alta leave to amend  
9 to eliminate the trade secret misappropriation allegations and to set forth a basis for the UCL claim  
10 that is not superseded by the CUTSA. *Id.* The October 17, 2018 Order further warned that failure  
11 to cure this deficiency would result in dismissal of the UCL claim with prejudice. *Id.* at 28.  
12 Despite this warning, and after three opportunities to plead a non-superseded UCL claim in the  
13 original complaint, the amended complaint, and the corrected amended complaint, Alta has  
14 nonetheless still failed to set forth a UCL claim that is not superseded by the CUTSA.  
15 Furthermore, additional leave to amend would be unduly prejudicial to LGE as Alta has already  
16 filed three complaints and this is the second time LGE has had to brief a motion to dismiss on this  
17 issue. Because further amendment would be futile and unduly prejudicial to LGE, Alta’s UCL  
18 claim is dismissed with prejudice. *See Leadsinger, Inc.*, 512 F.3d at 532.

19 **C. Declaratory Judgment**

20 Alta’s fifth cause of action seeks a declaratory judgment that is based on Alta’s UCL claim  
21 and Alta’s breach of contract claim. CAC ¶ 125–30 (“A judicial determination resolving this  
22 actual controversy is necessary and appropriate at this time in order to prevent LG[E]’s unjustified  
23 misappropriation of trade secrets and breach of contract, which would result in irreparable harm to  
24 Alta.”). In the briefing for the October 17, 2018 Order, LGE argued that Alta’s declaratory  
25 judgment claim was superseded to the extent it was based on Alta’s UCL claim and based on the  
26 same nucleus of facts as trade secret misappropriation. The Court agreed. In the October 17, 2018

1 Order, the Court dismissed Alta’s declaratory judgment claim to the extent it was based on Alta’s  
2 UCL claim. October 17, 2018 Order at 26. However, the Court granted leave to amend to  
3 eliminate the trade secret misappropriation allegations and to set forth a basis for a declaratory  
4 judgment as to LGE’s unfair, unlawful, or fraudulent business acts and practices. *Id.* at 26–27. In  
5 the instant motion, LGE argues that Alta has failed to amend its declaratory judgment claim to  
6 demonstrate that the claim, to the extent it is based on the UCL and on the same nucleus of facts as  
7 trade secret misappropriation, is not superseded by the CUTSA. Mot. at 11. However, LGE  
8 acknowledges that “Alta may seek a declaratory judgment based on the parties’ prospective rights  
9 and duties under contract.” *Id.* Therefore, LGE only requests that the Court to “dismiss Alta’s  
10 declaratory judgment claim, to the extent that it is based on the same nucleus of facts as trade  
11 secret misappropriation, with prejudice.” *Id.*

12 In the corrected amended complaint, Alta amended its declaratory judgment claim to track  
13 the same changes that Alta made to its UCL claim. *See, e.g.*, CAC ¶ 128 (“LG[E] is developing  
14 and using technology by using Alta’s proprietary and Confidential Information other than Alta’s  
15 trade secrets.”). Alta also notes that it “inadvertently” failed to remove a reference to  
16 misappropriation of trade secrets in paragraph 130 of Alta’s declaratory judgment claim. Opp’n at  
17 12. Further, Alta concedes that the declaratory relief that it seeks is related to Alta’s UCL claim.  
18 *See Opp’n at 12 n.11* (“The declaration sought by Alta relates to Alta’s UCL claim that LGE is  
19 ‘passing off’ Alta’s technology to the market as LGE’s own.”). However, as the Court already  
20 determined in Section III.B.2., with respect to its UCL claim, Alta has failed to amend its  
21 allegations to demonstrate that its claim is not superseded by the CUTSA. *See SunPower Corp.*,  
22 2013 WL 6160472, at \*5 (“CUTSA supersedes claims based on the misappropriation of  
23 information, regardless of whether such information ultimately satisfies the definition of trade  
24 secret.”). Therefore, the Court GRANTS LGE’s motion to dismiss Alta’s declaratory judgment  
25 claim to the extent that it is based on the UCL claim and the same nucleus of facts as the trade  
26 secret misappropriation claim.

1        The October 17, 2018 Order identified the deficiencies in Alta’s declaratory judgment  
2        claim and warned Alta that failure to cure the deficiencies would result in dismissal with  
3        prejudice. October 17, 2018 Order at 26–28. Alta was specifically on notice that it needed it  
4        eliminate the trade secret misappropriation allegations and set forth a basis for a declaratory  
5        judgment as to LGE’s unfair, unlawful, or fraudulent business acts and practices. *Id.* at 26–27. The  
6        corrected amended complaint is Alta’s third complaint and second attempt to cure the deficiencies  
7        identified in the October 17, 2018 Order. Therefore, the Court finds that further leave to amend  
8        would be futile. *See Leadsinger, Inc.*, 512 F.3d at 532. Additionally, it would be unduly  
9        prejudicial to LGE to allow Alta to file yet another amended complaint and require LGE to file a  
10       third motion to dismiss after the October 17, 2018 Order’s warning regarding failure to cure  
11       deficiencies. *Id.* The Court therefore grants the motion to dismiss Alta’s declaratory judgment  
12       claim to the extent that it is based on the same nucleus of facts as trade secret misappropriation  
13       with prejudice.

14       **D. Misappropriation of Trade Secrets in Violation of the DTSA and CUTSA**

15       LGE previously challenged Alta’s DTSA and CUTSA claims in LGE’s first motion to  
16       dismiss; however, the Court rejected LGE’s challenge and denied LGE’s motion to dismiss these  
17       claims. *See* October 17, 2018 Order at 7–18. Nonetheless, Alta amended its complaint after the  
18       Court’s October 17, 2018 Order. *See* CAC. LGE now argues that the amendments in the corrected  
19       amended complaint demonstrate that Alta’s DTSA and CUTSA claims are time barred. Mot. at  
20       12–18. Below, the Court discusses first the Court’s October 17, 2018 Order as it pertains to Alta’s  
21       DTSA and CUTSA claims as well as Alta’s breach of contract claim to the extent that discussion  
22       is relevant to the instant motion. Second, the Court discusses Alta’s amendments to the DTSA and  
23       CUTSA claims. Third, the Court discusses LGE’s instant statute of limitations challenge to the  
24       DTSA and CUTSA claims in the corrected amended complaint.

25       **1. The October 17, 2018 Order Denied LGE’s Motion to Dismiss the DTSA and  
26       CUTSA Claims but Granted LGE’s Motion to Dismiss the Breach of Contract  
27       Claim Based on LGE’s Failure to Return**

Under both the DTSA and the CUTSA, “misappropriation” means either (1) the “[a]cquisition of a trade secret by another person who knows or has reason to know that the trade secret was acquired by improper means;” or (2) the “[d]isclosure or use of a trade secret of another without express or implied consent.” 18 U.S.C. § 1839(5); Cal. Civ. Code § 3426.1(b). In the October 17, 2018 Order, the Court found that Alta’s original complaint brought its DTSA and CUTSA trade secret misappropriation claims on the basis that LGE had allegedly *used* Alta’s trade secrets. *See* October 17, 2018 Order at 16. The Court further found that Alta tried to raise in its opposition a new theory for the first time of misappropriation by acquisition and a continuous course of misappropriation. The Court did not consider this acquisition theory because it was absent from the complaint. *Id.* at 13 n.1, 16 n.2.

11        In LGE’s first motion to dismiss, LGE argued that Alta’s DTSA and CUTSA claims  
12 should be dismissed for two reasons: (1) Alta’s trade secrets expired under the terms of the 2011  
13 NDA three years after June 13, 2012, or June 13, 2015; and (2) Alta failed to describe the trade  
14 secrets that were misappropriated with sufficient particularity. *See id.* at 8–9. In the October 17,  
15 2018 Order, the Court disagreed with both of LGE’s arguments. *Id.* at 8–18. Specifically, as to  
16 LGE’s first argument, the Court concluded that LGE’s argument presented an issue of contract  
17 interpretation: “whether the Term Provision provided for the expiration of the 2011  
18 NDA/Agreement on June 13, 2012.” *Id.* at 10. The Court found that “the 2011 NDA’s Term  
19 Provision is ambiguous as to when the Agreement, and therefore LGE’s additional three-year  
20 obligation [to hold the Confidential Information in confidence], ended.” *Id.* Thus, the Court denied  
21 LGE’s motion to dismiss those claims. *Id.* at 8–18.

22 As for Alta’s breach of contract claim, LGE argued in its first motion to dismiss that to the  
23 extent Alta’s breach of contract claim was based on LGE’s alleged failure to return confidential  
24 information disclosed under the 2011 NDA, it was barred by the four year statute of limitations.  
25 *Id.* at 18–19. In the October 17, 2018 Order, the Court held that per Section 6 of the 2011 NDA,  
26 LGE was required to return the confidential information “upon the earlier of (i) the completion or

1 termination of the dealings between the parties contemplated hereunder; (ii) the termination of this  
2 Agreement; or (iii) at such time as the disclosing party may so request.” *Id.* at 19 (citing Compl.  
3 Exh. A ¶ 6). Thus, the Court analyzed when each of Section 6’s subsections ((i), (ii), (iii)) were  
4 triggered, and which of the subsections were the earlier of the three subsections. *Id.* The Court  
5 concluded that “(1) subsection (i) ‘the completion or termination of the dealings between the  
6 parties,’ refers to the end of the ‘Disclosure Period,’ which was June 13, 2012; (2) this subsection  
7 would be the ‘earlier of’ the other subsections; and (3) thus LGE’s obligation to return was  
8 triggered on June 13, 2012.” *Id.* at 20. The Court therefore found that Alta’s breach of contract  
9 claim based on failure to return confidential information accrued pursuant to Section 6 subsection  
10 (i) of the 2011 NDA at the end of the Disclosure Period, June 13, 2012, and that this claim had  
11 therefore expired pursuant to the four year statute of limitations on June 13, 2016. *Id.* at 21–22.  
12 Alta had filed its complaint on January 18, 2018. Therefore, Alta’s breach of contract claim based  
13 on failure to return was time barred. *Id.*

## 14 2. Alta’s Amendments to the DTSA and CUTSA Claims

15 On amendment, Alta now alleges misappropriation by *acquisition* (not just  
16 misappropriation by use), followed by a continuous course of conduct of disclosure and use  
17 thereafter.<sup>4</sup> *See, e.g.*, CAC ¶ 97 (adding allegation that LGE “acquired by misrepresentation, and  
18 continuously used and disclosed thereafter” Alta’s trade secrets); *id.* ¶ 98 (adding allegation that  
19 LGE misappropriated “Alta’s trade secrets through continuous fraudulent acquisition and  
20 continuous wrongful and fraudulent use and disclosure, through the present”); *id.* ¶ 104 (adding  
21

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22 <sup>4</sup> Alta disputes that this acquisition theory is a new theory and argues that Alta had alleged this  
23 theory in the original complaint. Opp’n at 18–19. However, Alta effectively admits this theory was  
24 not clearly laid out in the original complaint. For instance, Alta states “[i]nstead of using the word  
25 ‘acquired’ in pleading its trade secret counts in the [c]omplaint, however, Alta used the word  
26 ‘taken’ to refer to LGE’s acquisition misappropriation.” Opp’n at 18. Moreover, Alta also admits  
27 that even if Alta had alleged a misappropriation by acquisition theory in the original complaint,  
Alta’s theory has shifted in the corrected amended complaint because Alta’s original acquisition  
theory “was based upon misrepresentations that LGE made after the parties entered into the 2011  
NDA,” but Alta’s new theory is that LGE fraudulently induced Alta to enter into the 2011 NDA.  
*Id.* at 18, n.13. Finally, Alta admits that it has added new allegations to more clearly set out its  
misappropriation by acquisition theory in the corrected amended complaint. *Id.* at 19.

1 allegation that LGE “acquired by misrepresentation[,] and continuously used and disclosed  
2 thereafter”); *id.* ¶ 107 (adding allegation that LGE misappropriated “prior to May 11, 2016, Alta’s  
3 trade secrets throughout continuous fraudulent acquisition and continuous wrongful and fraudulent  
4 use and disclosure”). In particular, Alta has added factual allegations that LGE fraudulently  
5 devised a plan to acquire Alta’s trade secrets prior to the execution of the June 2011 NDA and  
6 then carried out the plan by entering into the 2011 NDA and acquiring trade secret information  
7 through that NDA as well as through representations that LGE was interested in becoming a  
8 potential investor. *Id.* ¶¶ 14, 19. Alta further added allegations clarifying that LGE publicly  
9 disclosed various trade secrets of Alta in a 2016 poster published by LGE and in a U.S. patent  
10 application filed in the United States on or around February 2, 2016 and published August 4, 2016.  
11 *Id.* ¶ 19.f. Alta alleged that it “did not discover LG[E]’s unauthorized use and disclosure of its  
12 trade secrets until on or around September 2016, and could not have reasonably discovered such  
13 sooner.” *Id.* ¶ 19.g.

14 **3. LGE’s Instant Motion to Dismiss Alta’s CUTSA and DTSA Claims**

15 Because of Alta’s new CUTSA and DTSA amendments that clearly allege a theory of  
16 misappropriation by acquisition, LGE argues that Alta’s claims are now barred by the three-year  
17 statute of limitations. Mot. at 12–18. The statute of limitations in the CUTSA states: “[a]n action  
18 for misappropriation must be brought within three years after the misappropriation is discovered  
19 [(“actual notice”)] or by the exercise of reasonable diligence should have been discovered  
20 [(“inquiry notice”)]. For the purposes of this section, a continuing misappropriation constitutes a  
21 single claim.” Cal. Civ. Code. § 3426.6. The statute of limitations for the federal DTSA mirrors  
22 that of the CUTSA and provides that an action for misappropriation “may not be commenced later  
23 than 3 years after the date on which the misappropriation with respect to which the action would  
24 relate is discovered or by the exercise of reasonable diligence should have been discovered. For  
25 purposes of this section, a continuing misappropriation constitutes a single claim of  
26 misappropriation.” 18 U.S.C. § 1836(d).

1           LGE’s argument is that first, pursuant to the terms of the 2011 NDA (and the Court’s  
2 interpretation of the 2011 NDA in the October 17, 2018 Order), LGE had a duty to return Alta’s  
3 confidential information at the end of the 2011 NDA’s “Disclosure Period,” which was June 13,  
4 2012. Mot. at 13; October 17, 2018 Order at 20. Second, because Alta alleges that LGE failed to  
5 return Alta’s confidential information both on and after that June 13, 2012 date, CAC ¶¶ 82–89,  
6 LGE argues that Alta was put on inquiry notice as of June 13, 2012 that LGE had misappropriated  
7 Alta’s trade secrets. Mot. at 13–15. Three years from June 13, 2012 is June 13, 2015. Because Alta  
8 did not file its complaint in the instant case until January 18, 2018, LGE argues that Alta’s  
9 CUTSA and DTSA claims are time barred.

10           In the alternative, LGE argues that Alta was put on actual notice through the September 23,  
11 2014 NDA, which stated that LGE “may currently or in the future be developing information  
12 internally, or receiving information from other parties that maybe [sic] similar to the Disclosing  
13 party’s information” and that “nothing in this Agreement will be construed as a representation or  
14 inference that the Receiving party will not develop products, or have products developed for it,  
15 that, without violation of this Agreement, compete with the products or systems contemplated by  
16 the Disclosing party’s Confidential Information.” Mot. at 15–16 (2014 NDA ¶ 8.1). Three years  
17 from September 23, 2014 is September 23, 2017. Because Alta did not file its complaint in the  
18 instant case until January 18, 2018, LGE argues that Alta’s CUTSA and DTSA claims are time  
19 barred. Mot. at 16.

20           Alta responds first that “LGE provides no legal or factual analysis in its Motion as to why  
21 LGE’s breach of its duty to return documents to Alta was a ‘misappropriation’ that would trigger  
22 the limitations period for Alta’s CUTSA claim.” Opp’n at 13. Second, Alta disagrees that LGE’s  
23 breach of its duty to return documents on June 13, 2012 placed Alta on inquiry notice of  
24 misappropriation. *Id.* at 15. Third, Alta challenges that the September 23, 2014 NDA put Alta on  
25 actual notice of any misappropriation of Alta’s trade secrets by LGE. *Id.* Finally, Alta argues that  
26 Alta was put on notice of LGE’s misappropriation of Alta’s trade secrets in mid-2016. *Id.* at 15–  
27

1 16. Because mid-2016 is less than three years from January 18, 2018, when Alta filed its  
2 complaint, Alta argues that Alta's CUTSA and DTSA claims are not barred by the statute of  
3 limitations. The Court discusses the parties' arguments in turn.

4 As an initial matter, Alta's first argument is mistaken. LGE did not assert that the breach of  
5 the duty to return documents on June 13, 2012 *was* a misappropriation. *See* Mot. at 14–15; Reply  
6 at 8–9. Instead, LGE asserts that its breach of the duty to return documents on June 13, 2012  
7 *placed* Alta on *inquiry notice* of potential misappropriation. Mot. at 14–15; Reply at 8–9. Thus,  
8 Alta's first argument conflates two distinct concepts: (1) when LGE first allegedly  
9 misappropriated Alta's trade secrets, and (2) when Alta first received notice sufficient to trigger  
10 the three-year statute of limitations period. Moreover, *Alta*, not LGE, is the one who alleges  
11 misappropriation, and Alta alleges that LGE misappropriated by fraudulent acquisition prior to  
12 June 13, 2012, starting in 2011. *See, e.g.*, CAC ¶ 19.

13 Second, as to the question of when the statute of limitations began to run, both parties  
14 dispute the applicability of *Wang v. Palo Alto Networks, Inc.*, No. C 121-05579 WHA, 2014 WL  
15 1410346 (N.D. Cal. Apr. 11, 2014). In that case, United States District Judge William Alsup of the  
16 United States District Court for the Northern District of California found “three independent  
17 reasons” for concluding that plaintiff Wang’s trade secret misappropriation claim was time-barred.  
18 *Id.* at \*6–9. One of the reasons—breach of the non-disclosure agreement—looks identical to the  
19 instant case. Specifically, in *Wang*, the parties had a non-disclosure agreement that stated: “Upon  
20 termination or expiration of the Agreement, or upon written request of [Wang], [defendant] shall  
21 promptly return to [Wang] all documents and other tangible materials representing the  
22 Confidential Information and all copies thereof.” *Id.* at \*2. Judge Alsup held that the *Wang*  
23 defendant had breached the non-disclosure agreement with Wang in April 2008 when the  
24 defendant “violated his agreement to return the documents containing Wang’s alleged trade  
25 secrets.” *Id.* at \*7. Judge Alsup continued, “Wang knew, moreover, that [defendant] had gone to  
26 work at Palo Alto Networks and was employed in the field of network security.” *Id.* “Wang knew  
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1 that [defendant] had never asked for relief from his duty to return the trade secrets.” *Id.* Judge  
2 Alsup concluded: “[t]his violation involving the trade secrets put Wang on inquiry notice. This too  
3 is dispositive in and of itself.” *Id.* Therefore, because Judge Alsup found that the defendant’s April  
4 2008 failure to return in breach of the non-disclosure agreement gave the *Wang* plaintiff inquiry  
5 notice, and because the *Wang* plaintiff did not file his complaint until October 2012, more than  
6 three years later, Judge Alsup concluded the plaintiff’s misappropriation claim was time barred.  
7 *Id.* at \*6.

8 The Court agrees with LGE that the instant case looks like *Wang*, and that under the  
9 reasoning of *Wang*, Alta was on inquiry notice as of June 13, 2012 of LGE’s potential  
10 misappropriation of Alta’s trade secrets. First, like in *Wang*, the 2011 NDA in the instant case  
11 contained language that LGE had an obligation to immediately return confidential information  
12 received thereunder “upon the earlier of (i) the completion or termination of the dealings between  
13 the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as  
14 the disclosing party may so request.” 2011 NDA ¶ 6; CAC ¶ 81. This Court previously found in its  
15 October 17, 2018 Order that LGE had a duty to return Alta’s confidential information at the end of  
16 the 2011 NDA’s “Disclosure Period,” which was June 13, 2012. October 17, 2018 Order at 20–21.  
17 The corrected amended complaint alleges that LGE failed to return Alta’s confidential information  
18 both on and after that date. CAC ¶¶ 57, 82–89. Second, like in *Wang*, the corrected amended  
19 complaint further alleges that Alta knew that LGE was seeking to engage in work in the same field  
20 as Alta. *Id.* ¶ 39 (“In June 2011, LG[E] had expressed an interest publicly in becoming involved in  
21 thin-film solar technology. Because LG[E] was a manufacturer of a number of mobile electronic  
22 devices, Alta identified LG[E] as a potential investor and joint venture partner in its future  
23 manufacturing operations”). Finally, like in *Wang* the corrected amended complaint makes no  
24 allegation that LGE ever asked for relief from its duty to return Alta’s trade secrets. *See CAC.*  
25 Therefore, the Court concludes that, like the plaintiff in *Wang*, Alta was on inquiry notice of  
26 potential misappropriation of trade secrets when LGE breached its duty to return confidential  
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1 information on June 13, 2012, which was more than three years before Alta filed its complaint on  
2 January 18, 2018.

3 Alta's attempts to distinguish the *Wang* case from the instant case are unpersuasive. First,  
4 Alta argues that Judge Alsup found that “[t]he decisive fact in the Wang decision for  
5 determination of the statute of limitations was the December 2007 publication of the patent  
6 application” that “gave the plaintiff constructive notice of his trade secrets.” Opp'n at 16. This  
7 argument by Alta misrepresents the *Wang* holding. Judge Alsup repeatedly emphasized in *Wang*  
8 that he found “three independent reasons” for concluding that Wang's misappropriation claim was  
9 time barred. 2014 WL 1410346, at \*6. One reason was the patent application that Alta references.  
10 *Id.* at \*6–7. However, the other reason, which is directly relevant to the instant case, was the *Wang*  
11 defendant's breach of the non-disclosure agreement when the defendant failed to return documents  
12 containing Wang's alleged trade secrets. *Id.* at \*7. Alta fails to acknowledge that Judge Alsup's  
13 order specifically stated with respect to the non-disclosure agreement violation that the violation  
14 “too [wa]s *dispositive* in and of itself.” *Id.* (emphasis added).

15 Second, Alta argues that the *Wang* decision was a summary judgment ruling based on  
16 “uncontradicted facts” in the evidentiary record. Opp'n at 16. Although this assertion is correct,  
17 for purposes of the motion to dismiss, the instant Court takes as true (or “uncontradicted”) the  
18 allegations in Alta's corrected amended complaint. Therefore, the procedural posture difference  
19 between the instant case and the *Wang* case does not constitute a difference that makes reliance on  
20 *Wang* inappropriate. Judge Alsup concluded as a matter of law that the *Wang* plaintiff was on  
21 inquiry notice when the defendant breached the non-disclosure agreement's requirement that the  
22 defendant return the trade secret documents. The instant Court concludes that nearly identical  
23 allegations in the instant case require the same finding as a matter of law. *See also, e.g.,*  
24 *Intermedics, Inc. v. Vetrinetex, Inc.*, 822 F. Supp. 634, 652 (N.D. Cal. 1993) (explaining that “[t]he  
25 court's central concern when analyzing the statute of limitations with respect to alleged  
26 misappropriations of trade secrets is with identifying the point at which the *first* apparent breach of  
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1 the confidential relationship occurred,” “since what trade secret law protects . . . [is] a right to  
2 maintain the integrity of a confidential relationship, it is the first known (or reasonably  
3 discoverable) breach of that relationship that creates the right to sue and thus triggers the running  
4 of the statute of limitations”).

5 In sum, having found that *Wang* is applicable, and having found Alta’s arguments to the  
6 contrary unconvincing, the Court concludes that Alta was on inquiry notice of potential  
7 misappropriation as of June 13, 2012. Therefore, Alta’s complaint, which was filed January 18,  
8 2018, more than three years after the June 13, 2012 date, is barred by the statute of limitations as a  
9 matter of law. This is sufficient to find that Alta’s CUTSA and DTSA claims fail.<sup>5</sup>

10 Finally, because the violation of the 2011 NDA was sufficient to put Alta on inquiry  
11 notice, it is of no matter that Alta alleges that it was put on actual notice by mid-2016. *See Opp’n*  
12 at 15–16; CAC ¶¶ 65–70; *see also, e.g.*, *Intermedics, Inc.*, 822 F. Supp. at 652. For statute of  
13 limitations purposes, the earlier June 13, 2012 inquiry notice triggered the start of the three-year  
14 statute of limitations period. *See* Cal. Civ. Code. § 3426.6; 18 U.S.C. § 1836(d).

15 Accordingly, having found that Alta’s CUTSA and DTSA claims are time barred, the  
16 Court GRANTS LGE’s motion to dismiss these claims. Further, the Court concludes that  
17 amendment would be futile. Alta’s claims are time barred as a matter of law. Moreover, Alta has  
18 made no suggestion in opposition that tolling is appropriate in the CUTSA and DTSA context or  
19 that Alta could plead facts that would toll the statute of limitations period. The Court therefore  
20 finds that amendment would be futile. At least one other court has declined to grant leave in a  
21 trade secret misappropriation case when the claim was time barred. *See, e.g.*, *Moddha Interactive,*  
22 *Inc. v. Philips Elec. N. Am. Corp.*, 92 F. Supp. 3d 982, 986, 992–94 (D. Haw. 2015) (dismissing  
23 trade secret misappropriation claim that is barred by the applicable statute of limitations with  
24 prejudice because granting leave to amend would be futile). Furthermore, additional leave to  
25

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26<sup>5</sup> For this reason, the Court need not discuss LGE’s additional argument regarding the fact that the  
27 2014 NDA provides evidence of *actual* notice of misappropriation.

1 amend would be unduly prejudicial to LGE as Alta has already filed three complaints and this is  
2 the second time LGE has had to brief a motion to dismiss on this issue. Accordingly, finding  
3 amendment would be futile and unduly prejudicial to LGE, the Court grants LGE's motion to  
4 dismiss Alta's CUTSA and DTSA claims with prejudice. *See Leadsinger, Inc.*, 512 F.3d at 532.

5 **E. Fraud Allegations**

6 Finally, LGE in a footnote moves to dismiss paragraphs 12, 14, 15, 16, 19, 41, 50, 51, 52,  
7 56, 64, 97, 98, 104, and 107 of the corrected amended complaint for failure to satisfy the pleading  
8 requirements in Federal Rule of Civil Procedure 9(b) for fraud allegations. Mot. at 8–11, n.5. The  
9 Court already dismissed paragraphs 97, 98, 104, and 107 of the corrected amended complaint  
10 because these paragraphs are part of the CUTSA and DTSA claims that the Court dismissed in the  
11 instant Order. Therefore, the Court considers LGE's challenge to only paragraphs 12, 14, 15, 16,  
12 19, 41, 50, 51, 52, 56, and 64 of the corrected amended complaint.

13 Alta asserts that LGE is precluded by Federal Rule of Civil Procedure 12(g) from  
14 challenging paragraphs 12, 14, 15, 16, 19, 41, 50, 51, 52, 56, and 64 because LGE did not bring  
15 this challenge in LGE's first motion to dismiss. Opp'n at 9–11; *see also* Fed. R. Civ. P. 12(g)  
16 ("[A] party that makes a motion under this rule must not make another motion under this rule  
17 raising a defense or objection that was available to the party but omitted from its earlier motion.").

18 The Court DENIES LGE's motion to dismiss Alta's paragraphs 12, 14, 15, 16, 19, 41, 50,  
19 51, 52, 56, and 64. Even assuming that LGE is not precluded by Rule 12(g) from raising this  
20 challenge in the instant motion to dismiss, LGE fails to explain *why* these paragraphs suffer from a  
21 lack of particularity. *See* Mot. at 8–11, n.5; Reply at 6–8. Thus, the Court DENIES LGE's motion  
22 to dismiss these paragraphs.

23 **IV. CONCLUSION**

24 For the foregoing reasons, the Court rules as follows:

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- 26 • The motion to dismiss for adding amendments not authorized by the Court is  
DENIED;
- 27 • The motion to dismiss the UCL claim is GRANTED with prejudice;
- The motion to dismiss the declaratory judgment claim to the extent that it is based

1 on the UCL claim and the same nucleus of facts as trade secret misappropriation is  
2 GRANTED with prejudice;

3

- 4 • The motion to dismiss the CUTSA claim is GRANTED with prejudice;
- 5 • The motion to dismiss the DTSA claim is GRANTED with prejudice;
- 6 • The motion to dismiss paragraphs 12, 14, 15, 16, 19, 41, 50, 51, 52, 56, and 64 of  
7 the corrected amended complaint is DENIED.

8  
9 In the instant motion to dismiss, LGE did not challenge Alta's third claim for breach of  
10 contract or Alta's fifth claim for declaratory judgment to the extent that claim is based on the  
11 parties' prospective rights and duties under contract. *See Mot.* Accordingly, as a result of the  
12 Court's rulings in the instant order, the claims that remain are Alta's third claim for breach of  
13 contract and Alta's fifth claim for declaratory judgment to the extent that claim is based on the  
14 parties' prospective rights and duties under contract.

15 **IT IS SO ORDERED.**

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17 Dated: April 30, 2019

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LUCY H. KOH  
United States District Judge